

§ 251.7

37 CFR Ch. II (7–1–02 Edition)

If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

[59 FR 23981, May 9, 1994, as amended at 63 FR 30635, June 5, 1998]

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the FEDERAL REGISTER according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the FEDERAL REGISTER.

§ 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under § 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding

from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the FEDERAL REGISTER at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a

recorded vote of the panel and included in the announcement.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994]

§ 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close meetings, or any portion of a meeting, or withhold information from the public:

- (a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or
- (b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or
- (c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or
- (d) If the matter involves privileged or confidential trade secrets or financial information; or
- (e) If the result might be to accuse any person of a crime or formally censure him or her; or
- (f) If there would be a clearly unwarranted invasion of personal privacy; or
- (g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:
- (1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

[59 FR 23981, May 9, 1994, as amended at 59 63040, Dec. 7, 1994; 60 FR 8197, Feb. 13, 1995]

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the